



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 177649

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 27, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock Cty. Dept. of Social Services regarding Child Care (CC), a hearing was held on November 29, 2016, by telephone.

The issue for determination is whether the county agency correctly determined an overpayment of childcare expenses paid on behalf of the petitioner in the amount of \$1,223.38 from January 1, 2016 through May 31, 2016.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
Rock Cty. Dept. of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Kristin P. Fredrick  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. On December 1, 2015 the petitioner completed a renewal interview identifying only herself and her two minor children as a three person household.
3. Beginning in February 2016 the petitioner's boyfriend, who is the father of their two children in common, began spending four to five nights per week at her place of residence in order to help take care of their two children while the petitioner worked a late shift. The arrangement also allowed the boyfriend to save gas money when he drove to work the next morning.
4. The petitioner's boyfriend was employed full time forty hours per week at \$13.00 per hour.
5. The petitioner did not report that her boyfriend had moved in with her until October 2016.
6. The petitioner received childcare benefits in the amount of \$939.18 from February 1, 2016 through May 31, 2016.
7. Had the petitioner reported that the boyfriend was living in her residence, the amount of the household's total income would have resulted in the ineligibility for childcare benefits due to being over the income limit.
8. On October 24, 2016 the agency sent the petitioner a Child Care Overpayment Notice in the amount of \$1,223.38 for benefits received from January 1, 2016 through May 31, 2016.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments is mandated regardless of fault. Wis. Admin. Code, §DCF 101.23, §DCF 201.04(5)(a); *Wisconsin Shares Child Care Subsidy Policy Manual*, §3.5.2. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). An assistance group with gross income level exceeding 200% of the Federal Poverty Level (FPL) is not eligible for child care subsidy benefits. *Wisconsin Shares Child Care Subsidy Policy Manual*, §1.5.1.2.

Assistance Group is defined to include any of the following individuals who reside in the same household:

- An individual who is a parent caring for a child
- The individual's dependent children including 18 year olds who live at home, attend high school, and are expected to graduate by their 19<sup>th</sup> birthday
- Any dependent children of the individual's dependent children
- The individual's spouse or any non-marital co-parent
- The spouse's dependent children
- The non-marital co-parent's dependent children

*Id.* at §1.4.1.

Participants in the Wisconsin Shares program are required to report the following changes by the 10<sup>th</sup> day after the change has occurred:

- A change of residence address
- A change in mailing address
- A change in the household members, including when someone moves into or out of the home
- A change in relationship with a child in the household (i.e. adoption, paternity establishment or legal parentage, foster care, subsidized guardianship, interim caretaker, or kinship care)
- A change in marital status
- A change in the shared placement schedule of a child
- A change in monthly income, whether earned or unearned, (for example: a change in rate of pay or a change in the number of hours worked) which increases monthly income by \$250.00 or decreases the monthly income by \$100.00 or any increase in income that raises the child care Assistance Group's monthly gross income above 200% of Federal Poverty Level (FPL)
- A change in child support and/or a change in family support that increases the aggregate amount of the support received for all household members to greater than \$1,250.00 per month
- A change in an individual's approved activity
- A change in need for child care
- A change in child care providers
- The child is no longer attending the child care provider

*Wisconsin Shares Child Care Subsidy Policy Manual*, §1.9.1. An overpayment, which is the result of not timely reporting a change that affects eligibility such as household composition or income not being accurately reported is considered effective the date of the change. *Id.*, §3.5.1.

The petitioner testified that starting in February 2016 the children's father spent 4 to 5 nights per week at her place because he watched the children while she worked a late shift beginning at 3:00 p.m. and that he spent the night in order to save gas when driving to work the next day. The petitioner provided written statements from herself, the father of the children and two other witnesses that corroborated the fact that the boyfriend/children's father began regularly staying overnight at the petitioner's residence in February 2016. The county agency established by a preponderance of the evidence that the petitioner's boyfriend resided in the petitioner home with their children in common beginning in February 2016, not January, and that she had failed to report a change in the household. Accordingly, based upon the addition of the boyfriend's income, the petitioner was not eligible for child care assistance benefits from February 1, 2016 through May 2016 in the amount of \$939.18.

### **CONCLUSIONS OF LAW**

1. The petitioner failed to report accurate household members of the assistance group by not including the boyfriend/father of her children effective February 1, 2016.
2. There was insufficient evidence to support an overpayment of Child Care due to failure to report accurate household members going back to January 1, 2016 in Claim [REDACTED]
3. The county agency correctly determined an overpayment of Child Care expenses paid from February 1, 2016 through May 31, 2016 in the amount of \$939.18 in Claim [REDACTED]

**THEREFORE, it is**

**ORDERED**

That the county agency may recover an overpayment of Child Care expense in the amount of \$939.18 from the petitioner in Claim [REDACTED] for the dates of February 1, 2016 through May 31, 2016. The petition for review is hereby dismissed in all other respects.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 3rd day of January, 2017

\s \_\_\_\_\_  
Kristin P. Fredrick  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 3, 2017.

Rock Cty. Dept. of Social Services  
Public Assistance Collection Unit  
Child Care Fraud